ORIGINAL

Supreme Court, U.S.
FILED
DEC 14 2015
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NO. 14-9496

In The
Supreme Court of the United States

ELIJAH MANUEL,

Petitioner,

v.

CITY OF JOLIET, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY TO RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

Stanley B. Eisenhammer
Counsel of Record
Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP
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LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

City of Joliet, Illinois, a municipal corporation

Officer Terrence J. Gruber

Officer Thomas Conroy

Sergeant Scott P Cammack

Officer Aaron Bandy

Officer Jeffrey German

Sergeant John Stefanski

Sergeant Joseph Rosado

Officer Jeffery Kneller

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Wallace V Kato, 549 U.S. 284 (2007) 1

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OTHER AUTHORITIES

Oral Argument, Manuel v. City of Joliet, 590 Fed. Appx. 641 (7th Cir. 2015) (No. 14-1581), *available at* http://media.ca7.uscourts.gov/oralArguments/oar.jsp?caseyear=14&casenumber=1581&listCase=List+case%28s%29 ..... 1, 2

I. PETITIONER'S FOURTH AMENDMENT MALICIOUS PROSECUTION CLAIM IS NOT TIME-BARRED

This reply to Respondents' Response to Petition for Writ of Certiorari is filed because the Response misstates the law with respect to the statute of limitation. (Resp'ts' Resp. to Pet. for Writ of Cert. 4–5). Respondents argue that Elijah Manuel's (hereinafter "Manuel" or "Petitioner") Fourth Amendment malicious prosecution claim is barred by the two year statute of limitations because it begins at the time he became subject to legal process (sometime before April 8, 2011), as opposed to when the charges were dropped (May 4, 2011). This issue was not addressed by the Petitioner because not only is Respondents' position contrary to the Supreme Court and the Seventh Circuit precedent, but Respondents also conceded this issue during oral argument before the Seventh Circuit Court of Appeals.

A federal malicious prosecution claim under 28 U.S.C. § 1983 does not accrue until the underlying proceedings terminate in favor of the plaintiff. *Julian v. Hanna*, 732 F.3d 842, 845 (7th Cir. 2013) (citing *Heck v. Humphrey*, 512 U.S. 477, 484 (1994); *see Wallace v. Kato*, 549 U.S. 384, 388 (2007) ("[I]t is the standard rule that accrual occurs when the plaintiff has a complete and present cause of action.") (internal quotations omitted); *Johnson v. Saville*, 575 F.3d 656, 659 (7th Cir. 2009) (listing the common law elements of a malicious prosecution claim in Illinois, including that the charges terminate in favor of the plaintiff).[1] Upon questioning at oral arguments, Respondents acknowledged this point. Specifically, Respondents' counsel was asked, "If we did recognize such a claim, at what point would you think the statute of limitations would begin to run? From the point of misrepresentation or from the point the underlying proceedings were terminated in favor of the individual?" Oral Argument at 13:36, Manuel v.

[1] Respondents agree that the appropriate statute of limitation is two years pursuant to Illinois law. 735 ILCS § 5/13-202.

City of Joliet, 590 Fed. Appx. 641 (7th Cir. 2015) (No. 14-1581), *available at* http://media.ca7.uscourts.gov/oralArguments/oar.jsp?caseyear=14&casenumber 1581&listCase=List+case%28s%29. Respondents conceded:

> If you were to recognize the malicious prosecution under the .... under 1983 and Fourth Amendment, state law malicious prosecution, the accrual is the time at which the proceedings are terminated in favor of that individual. So in this case, the date, I think the date would have been May 4th of 2011...

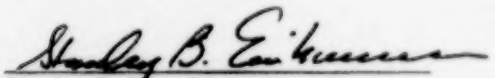
Id. at 14:00.

Manuel filed his claim on April 10, 2013, less than two years after the criminal proceedings terminated on May 4, 2011. As a result, his Fourth Amendment malicious prosecution claim would not be time-barred if it were recognized by this Court.

II. CONCLUSION

Therefore, with this clarification of the law, we respectfully request that this Court grant the petition for a writ of certiorari to resolve a recurring issue of national importance and to settle the long-standing conflict among the circuit courts of appeal as to the availability of a Fourth Amendment malicious prosecution claim.

Respectfully submitted,



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No. 14-9496

IN THE
SUPREME COURT OF THE UNITED STATES

ELIJAH MANUEL – PETITIONER

VS.

CITY OF JOLIET, ET AL.- RESPONDENT(S)

PROOF OF SERVICE

I, Stanley B. Eisenhammer, an attorney, do swear or declare that on this 14th day of December 2015, as required by Supreme Court Rule 29, I have served the enclosed PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents properly addressed to each of them by delivery to a third-party commercial carrier for delivery within 3 calendar days. The names and addresses of those served are as follows:

Martin J. Shanahan, Jr.
Corporation Counsel
City of Joliet Legal Department
150 West Jefferson Street
Joliet, IL 60432

I declare under penalty of perjury that the foregoing is true and correct.
Executed on December 14, 2015.

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December 14, 2015

Via Federal Express

Scott S. Harris, Clerk
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

RE: Supreme Court Docket #14-9496
Elijah Manuel v. City of Joliet, et al.
Reply to Response in Opposition to Petition for Writ of Certiorari

Dear Mr. Harris:

Enclosed for filing are an original and ten copies of Petitioner Elijah Manuel's Reply to the City of Joliet's Response in Opposition to the Petition for a Writ of Certiorari, and accompanying Proof of Service.

Please contact my associate, Mary A. Karagiannis, or me, if you have any questions.

Sincerely,

HODGES, LOIZZI, EISENHAMMER,
RODICK & KOHN LLP

Stanley B. Eisenhammer

SBE/cd

Enclosures

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